

SECRET

27 November 1974

MEMORANDUM FOR: Director of Personnel

SUBJECT : Rights of Employees to Switch from CIARDS  
to Civil Service Retirement and Vice Versa

1. You have advised orally that you are proposing a regulation which will provide as follows:

... a participant in CIARDS who after 15 years of service and 60 months of qualifying service has elected to remain a participant for the duration of his Agency employment may not thereafter transfer to the Civil Service Retirement System as an Agency employee. Similarly, an eligible employee who elects not to be designated a participant or to remain in CIARDS may not thereafter be admitted to CIARDS.

These issues were addressed in a series of memoranda as follows:

- a. Memo to D/Pers fr OGC dtd 24 Jan 66, subj: Right of Appeal of Designation as a Participant in the CIA Retirement and Disability System Following Exercise of Election to Continue in the System;
- b. Memo to IG fr OGC dtd 11 Jan 68, subj: Eligibility to CIA Retirement System;
- c. Memo to IG fr OGC dtd 18 Jan 68, subj: [REDACTED] Retirement; and
- d. Note on routing slip to DD/Pers/SP fr OGC dtd 25 Oct 73.

25X1A

25X1A

Declassified when  
separate from  
attachments

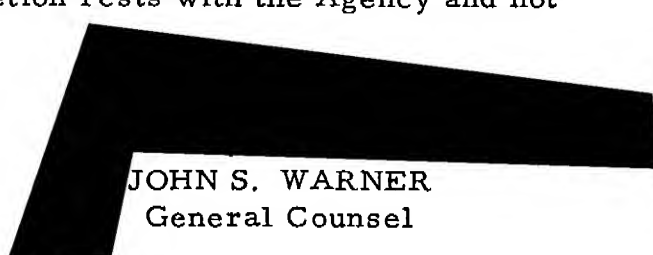
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CL BY 000276

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2. The substance of the above memoranda was that a participant in CIARDS with 15 years of service and 60 months of qualifying service who elected to remain a participant has no legal right thereafter to be transferred to the Civil Service Retirement System. They also held that a participant in CIARDS who has elected not to remain in CIARDS has no legal right at a later date to elect to revert to CIARDS in view of the option all employees are required to sign. Similarly, an employee who is otherwise eligible to be designated a participant in CIARDS but elects not to be so designated has no legal right at a later date to be designated a participant in CIARDS. After further review of the law, I see no basis to change these earlier rulings. I think it possible that an eligible employee who has not exercised such an option may well have a good case for designation as a matter of legal right if he otherwise meets all of the eligibility criteria.

3. While it is pointed out employees would have no legal rights to switch from one system to another under the circumstances described, I also find no legal bar to the Agency honoring their request if it saw fit as a matter of policy. The discretion rests with the Agency and not with the employee.



JOHN S. WARNER  
General Counsel

Attachments

SECRET

OGC 66-0123

MEMORANDUM FOR: Director of Personnel

SUBJECT: Right of Appeal of Designation as a Participant  
in the CIA Retirement and Disability System  
Following Exercise of Election to Continue in  
the System.

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25X1A 1. I have reviewed the file and correspondence forwarded with the memorandum of 10 January 1966 concerning the appeal of [REDACTED] of his designation as a participant in the CIA Retirement and Disability System. Election to remain a participant in the CIA Retirement System for the duration of employment is not subject to review or approval by the Director.

25X1A 2. [REDACTED] titled "Designation of Employees on Duty at Date of Enactment of the Act" provides as follows:

"... An employee who has fifteen or more years of Agency service when the review of his case is completed, who has met the provisions of subparagraph c(2) above, and whose career is adjudged by the Director of Personnel to be qualifying for the System may be designated a participant. Thereafter, such participant may elect to remain a participant for the duration of his employment by the Agency and such election shall not be subject to review or approval by the Director."

25X1A

3. The fact that [REDACTED] election to remain a participant was made before he was designated a participant does not create any new right of review or appeal. The exercise of the election prior to designation merely insured that the desires of the individual to continue under Civil Service or to be transferred to the Agency Retirement and Disability System will be followed.

4. Looking to the specific question raised in paragraph 7 of your memorandum, it is seen that no right of appeal from designation as a participant remains to an employee who has exercised his "15-year" election to remain a participant. The right of appeal is extinguished upon exercise of the right of election to remain a participant. In keeping therewith, it would be appropriate to issue corrective personnel actions to foreclose possible misunderstanding and confusion in other cases previously processed. Although no additional right of appeal, contrary to the Act and regulations, is created by the statement set forth under remarks in the Form 1150, new forms omitting this statement should be issued.

5. While we have said above that no right of appeal exists under the statute or regulations, we do not intend to say that the employee's request for consideration should not receive attention. While technically there is no right of appeal on the issue involved, by the same token there is no legal bar to taking the action requested, i. e., removal from the CIA Retirement System. It would appear completely appropriate to consider his request on the merits and not merely to turn him down on the grounds that he has no right of appeal.

6. The file is returned herewith.

s/ John S. Warner  
JOHN S. WARNER  
Deputy General Counsel

Att.

cc: IG  
CIA Retirement Board

OGC 68-0045

11 JAN 1968

MEMORANDUM FOR: Inspector General

ATTENTION: [REDACTED]

25X1A

SUBJECT: Eligibility to CIA Retirement System

1. In conversations with you and [REDACTED] the following questions have been presented: 25X1A

a. Does an employee who meets the standards prescribed by the CIA Retirement Act (Section 235(a)) have the right to be designated as a participant in the system and therefore to be eligible for retirement under the CIA Retirement Act?

b. If the answer to the former is in the affirmative, does such employee who, notwithstanding his entitlement, has elected to remain in the Civil Service retirement system, have the right to reverse himself and be retired under the CIA system?

2. The statute, I believe, is not specific on either question. Both the statute and the CIA regulation, [REDACTED] indicate that the Director "may" designate employees to the system who meet certain standards. The tenor of the regulation however would indicate that anyone meeting the standards is entitled to be designated. For example, [REDACTED] indicates that the system "is reserved exclusively for those employees who have accepted the obligation to serve anywhere and at any time according to the needs of the Agency, and who are serving on a career basis in a field which normally requires the performance of minimum periods of qualifying service as an integral part of a career in that field."

Similarly the regulation provides for review by the Director of persons designated to the system but who have not completed fifteen years of Agency service, thus permitting the Director to conclude that the employee's circumstances or career have changed to a point that he no longer qualifies. Since the statute permits, but does not require, the Director to designate to the system persons who have the requisite standards, it would seem that no individual has an enforceable right to be so designated. Nevertheless, it would also seem contrary to the purpose and thrust of the statute and regulation to deny participation to an employee who does meet the standards prescribed by the statute.

3. I see nothing in the statute which would preclude the Director from designating to the system any employee who meets the standards at any time the Director wants to do so. This would mean that the Director could so designate an employee who earlier had elected to remain in the Civil Service system. Similarly, we would think that even if an employee had an enforceable right to be designated, there would seem to be no requirement in law or regulation that he be given this option a second time.

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Associate General Counsel

18 January 1968

MEMORANDUM FOR: Inspector General

SUBJECT: [REDACTED] Retirement

25X1A

There is a possibility that [REDACTED] will resort to the courts in an attempt to enforce what [REDACTED] thinks is his right to come under the CIA retirement system. If this course is followed, there would be no way to stop [REDACTED] from filing suit even though the CIA Retirement Act states that ". . . any determinations by the Director authorized by the provisions of this Act shall be deemed to be final and conclusive and not subject to review by any court." However, considering that the Congress has based nonreviewability as being in the interest of national security and the fact that on numerous occasions the courts have dismissed suits where the statute sued under says there shall be no judicial review, the Government would probably prevail on a motion to dismiss. The courts have ruled that, if a constitutional question ever arose, perhaps a nonreviewability section in a statute would be narrowly construed so that the court could reach the constitutional question. But, because a person does not have a right to be designated a participant under the CIA Retirement Act, and the Director may or may not so designate any person, this discretion would probably eliminate any constitutional question being raised, resulting in probable dismissal of the suit.

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[REDACTED]  
General Counsel

Attachment-File on Subject

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

25X1A

Reconsideration of [REDACTED] For Inclusion in CIARDS

FROM:

DD/Pers/SP  
5E-67 Hqs.

EXTENSION

6872

NO.

DATE

25 OCT 1973

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

25X1A

1. Mr. John S. Warner  
7D-01 Hqs.

10/26/73

10/26/73

[Signature]

John:

We now have a request that [REDACTED] be admitted to CIARDS. You might remember this case. If not, the notes on top of the file might refresh your memory. This man was actually approved on 13 September 1966 on the basis of domestic qualifying service. You will also note that the man chose not to be admitted and indicated that he did not elect to remain a participant in the System for fear that it would be used as an instrument to effect his separation. Now he wants in. The question, of course, is the effect of the election which he made in 1966. If we are to give any meaning to an election to remain or not remain in the System, I don't see how we can allow a man to decide to go in or out at will. Would you review this case and provide us the necessary legal opinion upon which we can base a reply?

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Ben: In view of the signed exercise of option dated 25 Oct 1966 which includes the sentence, "Once your election has been made, you do not have the privilege of changing it at some later date." I think we ought to stick by our position. Nevertheless, I do not think we are legally barred if we wish to change of election [REDACTED]

John S. Warner

Approved For Release 2001/03/23 : CIA-RDP84-00688R000200250002-6

FORM 3-62

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USE PREVIOUS EDITIONS

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